

**1729987 (Migration) [2018] AATA 2928 (12 June 2018)**

**DECISION RECORD**

**DIVISION:** Migration & Refugee Division

**CASE NUMBER:** 1729987

**MEMBER:** Adrienne Millbank

**DATE:** 12 June 2018

**PLACE OF DECISION:** Brisbane

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 12 June 2018 at 9:29am

**CATCHWORDS**

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – Full Federal Court remit – Genuine spousal relationship – Claimed to be a vulnerable person – Family violence claim – Protection order – Never owned joint assets or liabilities – Joint receipt of inexpensive items – Knowledge of employment conditions – Ineffectual payroll officer letters – Psychologist report – Self reported symptoms – Centrality of applicant’s daughters role – Duration of parties’ relationship – Decision under review affirmed

**LEGISLATION**

*Migration Act 1958* (Cth), ss 5F, 65, 359AA

*Migration Regulations 1994* (Cth), r 1.15A, Schedule 2 cls 820.211, 820.221

**CASES**

*Sun v MIBP* [2017] FCA 1270

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 13 June 2014 to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 26 March 2014 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a). The evidence provided was insufficient to demonstrate that the applicant was in a genuine and continuing relationship with the sponsor.
4. On 1 July 2014 the applicant appealed the decision to the then Migration Review Tribunal (MRT). The MRT affirmed the decision on 21 April 2016.
5. [In] May 2016 the applicant appealed the decision to the Federal Circuit Court of Australia (FCCA). The FCCA dismissed the appeal [in] November 2016.
6. On 7 December 2016 the applicant appealed to the Full Federal Court (FFC). On 27 October 2016 the FFC remitted the decision to the Tribunal for reconsideration. In his decision, *Sun v MIBP* [2017] FCA 1270, Justice Reeves found that the Tribunal had failed to approach its review in the manner required of it by r.1.15A(2).
7. The applicant appeared before the Tribunal on 1 May 2018 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's daughter and son-in-law, as supporting witnesses. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
8. Just prior to the hearing the Tribunal received a submission from the applicant's representative from [a legal centre], requesting that the applicant be treated as a vulnerable person because she met the following definition in the Tribunal's Guidelines:

Older age and frailty; disorders of older age, memory loss and inability to cope with complex decision making, sensory and mobility problems which prevent new information being accessed and new learning.
9. At the hearing the applicant asked if her daughter could answer questions on her behalf, because her daughter knew all about her Partner visa application and her relationship. No evidence was provided at this time, or subsequently, that the applicant has been diagnosed with memory loss or sensory or mobility problems or any degenerative or cognitive disorder, and the Tribunal did not accept that at [age], the applicant is of 'older age'. The applicant showed herself able to respond lucidly to general questions asked at the outset of the hearing about her life in China, including her former marriage, family life and employment, and to specific contemporary questions, for example her three sons' ages, and about how and when she came to Australia and first met the sponsor.
10. The Tribunal did not agree to the request because it was concerned that in seeking to be treated as a vulnerable person and have her daughter answer questions on her behalf, the

applicant was seeking to protect herself from the inquisitorial nature of a Tribunal hearing and from being required to answer questions about her relationship with the sponsor. However, on several occasions the Tribunal asked the applicant's daughter, as a sworn witness, to supplement or expand on responses provided by the applicant. The Tribunal questioned the applicant in a clear manner, and provided time for her to respond. The Tribunal allowed the applicant to seek and obtain advice and assistance from her representative several times during the hearing. The Tribunal invited the applicant to take a break, and briefly adjourned the hearing, when she became visibly distressed.

11. The Tribunal advised the applicant, pursuant to s. 359AA of the Act, that it had information that would lead or could contribute to the decision under review being affirmed. The Tribunal advised that this information was contained in the Department's record of decision; the MRT record of decision; and the two judicial decisions. The Tribunal advised that this information was also contained in emails and letters provided to the Tribunal by the sponsor regarding the nature of the relationship; the breakdown of the relationship; and his withdrawal of his sponsorship.
12. The applicant was advised that the Tribunal would be taking into account all of the information available to it that was relevant to her case, including the information on the MRT file and testimony provided at hearings. The applicant was advised that when issues were raised or questions asked based on information adverse to her case, she could seek an adjournment and obtain advice from her representative. The applicant indicated, through her daughter, that she was familiar with the information that had led or contributed to the application being refused.
13. The applicant sought and was granted one adjournment during the hearing.
14. The applicant was represented in relation to the review by a registered migration agent from [the legal centre], who attended the hearing.
15. The representative requested time to make a post-hearing submission, and was granted seven days. On 11 May 2018 the representative requested and was granted a further seven days, to 22 May 2018, to make a post-hearing submission. On 18 May 2018 the representative requested a two-week extension, to 1 June 2018, to enable a report to be prepared by a consulting psychologist. The Tribunal agreed to this request. Documents were provided to the Tribunal on 1 June 2018.
16. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

## **CONSIDERATION OF CLAIMS AND EVIDENCE**

17. The applicant was born in Shandong Province, [China]. At the time of this decision, she is [age] years old; at the time of application she was [age]. She declared one previous marriage which ended with the death of her husband in 2005. She has [a number of] children from this marriage: [sons] born in [different years], who live in China, and a daughter, born in [year], who lives in Australia. The applicant's daughter arrived in Australia on a [temporary] visa and obtained permanent residence through the grant of a Partner Residence (subclass 801) visa on 24 September 2013.
18. The applicant first travelled to Australia on a [temporary] visa, from [March] – [September] 2013. She returned [in] October 2013 and was granted a Bridging A visa on 26 March 2013 in association with this application. She has worked as a casual [occupation] in a [workplace] while in Australia.

19. The sponsor was born in [year] in [a suburb]. At the time of application he was [age] years old and at the time of this decision, [age]. He declared one previous marriage, which ended in divorce in 1992. According to his sponsorship form he has no children. At the time of this decision he is on a Disability Support pension. A letter, signed [in] February 2016, was provided by the sponsor's general practitioner to the MRT, advising that he 'had a [medical condition] following which a [procedure] was done in March 2010', and that he 'was diagnosed with [another condition] in September 2013'.
20. The parties claim that they first met at a 'family party' or 'get together' at the home of a friend of the applicant's daughter, in [City 1], [in] November 2013. At the time the applicant was staying with her daughter [in City 2], and the sponsor was living in [City 1]. The applicant's daughter and her friend interpreted for the parties, as the applicant does not speak English. The sponsor subsequently drove several times to visit the applicant at her daughter's house [in City 2]. The parties claimed they entered into a committed relationship [in] January 2014. They married in a civil ceremony at [a suburb in City 1], [in] March 2014.
21. The application was refused on 13 June 2014. The applicant lodged an application for review with the then Migration Review Tribunal on 26 June 2014. On 25 January 2016 the sponsor advised the MRT that his relationship with the applicant had ended. On 21 March 2016 the sponsor confirmed, in writing, to the MRT that he was withdrawing his sponsorship, and advised, in a phone call, that the visa applicant was 'trying to claim domestic violence'. On 22 March 2016 the applicant, through her agent, indicated to the Tribunal that she was intending to claim that she had suffered family violence.
22. On 21 April 2016, the MRT affirmed the Delegate's decision. The Member accepted on the basis of the evidence provided (a protection order made against the sponsor on 18 March 2016), that a claim of relevant family violence had been properly made, but did not find that the applicant was in a genuine relationship with the sponsor at the time she claimed to have suffered the family violence.
23. The issue in the present case is whether the applicant was in a genuine spousal relationship at the time of application and before the relationship ended; and, if so, whether the sponsor suffered from family violence at the hands of the sponsor during the relationship.
24. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
25. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.
26. A copy of a [State 1] Marriage Certificate was provided, certifying that the parties married at [a suburb in City 1] [in] March 2014. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

## **Are the other requirements for a spousal relationship met?**

### *Financial aspects of the relationship*

27. At the time of application, in her Form 80 for character assessment, the applicant stated that from 1994 her position of employment in China was that of 'owner, full time' of a [business], and that she retired in May 2005 in order to look after her son's children. However, when asked at hearing whether she had brought with her assets from the sale of her [business], she stated that she had never owned a [business] in China or anywhere else. She stated that she was a housewife until her first husband died, and that following his death she did casual, menial work, [in] a [business] managed by one of her sons. She stated that her sons refused to look after her, that the son whose [business] she worked in paid her very little and treated her badly, and that she had brought nothing to Australia. She stated that her daughter paid for her travel and visa charges and filled in the forms and organised her documents for her. She confirmed that she and the sponsor never owned any joint assets and never had any joint liabilities.
28. When asked about another discrepancy on her Form 80 — where she had her birth year listed as [year], rather than [year] — she stated that the sponsor, who didn't know her correct age and didn't know that she didn't own the [business] in China where she had worked, filled in this form for her, rather than her daughter.
29. Statements of transactions were provided from the parties' joint bank account from [a date in] January 2014 – [a date in] January 2016, and from [date] January – [date] March 2016. At hearing the Tribunal asked the applicant why she and the sponsor opened a joint account before they married. She stated that they were 'happy with each other' following their introduction. She acknowledged she used the joint account, and that the sponsor used his own, personal account. The Tribunal asked the applicant why she kept using the joint account after the relationship had ended. She stated that it has since been closed, as she doesn't need an account now she is living with her daughter, who provides her directly with cash.
30. The Tribunal asked the applicant why there were regular cash deposits of \$200 a week into the joint account, followed by cash withdrawals of the same amount, and why there was no evidence of any payments for rent or utilities. The applicant stated that her daughter deposited money for her, and that the sponsor paid such things as rent and utilities bills from his own account. The Tribunal asked the applicant about the sponsor's previous employment and income, and how much rent he paid. The applicant stated that she didn't know what the sponsor's employment had been, or whether he owned any property. She stated 'he only told' her that he got \$500 or \$600 from 'the government' every month. She stated that she didn't know how much rent he paid.
31. At the time of application copies of letters purportedly sent by both parties to 'The payroll officer', directing their earnings to be deposited into the joint account, were provided. From the statements of transactions provided, neither the sponsor's Centrelink benefits nor the applicant's earnings from her [casual] work were deposited in the joint account. For this reason, the Tribunal finds that these letters were either fictional or ineffectual.
32. At hearing, the applicant confirmed that she earned very little when she worked as a casual [worker] in China and in Australia, and that she used cash for her financial transactions, for reasons of her age and cultural background. She confirmed that her daughter paid for her visa charges, and helped her with her application.
33. When asked on what basis she claimed that she and the sponsor had shared their expenses, the applicant stated that they used cash to purchase items together. Receipts

were provided, in joint names, for a number of household items purchased in March 2014, including: \$43.50 for a rice cooker; \$49.95 for a Kambrook red kettle; \$20 for a USB memory card; and \$42.00 for a stainless-steel jewellery ring. Joint receipts were provided for further purchases in 2015 and 2016, including \$130 for a food mixer. The most expensive item purchased was a TV, for \$399, on 11 March 2016. When asked why the parties had requested receipts in joint names for small household items, and why they had requested a receipt in joint names for a ring, a jewellery item that would normally be a personal purchase, for oneself or as a gift, the applicant stated that they obtained receipts in joint names because 'it was better to record it'.

34. When asked if the parties had jointly purchased any significant furniture or household items together, apart from the television, the applicant claimed that she purchased a washing machine and a new car for the sponsor. She stated that she didn't have receipts for these purchases, because she used cash. She acknowledged that she does not drive.
35. The Tribunal accepts, on the evidence provided, that the sponsor's car was registered and insured in joint names. The Tribunal accepts that the applicant and the applicant's daughter contributed to these costs. The Tribunal however found the applicant vague and evasive in response to questions at hearing about her financial arrangements while living with the sponsor. The Tribunal did not find her a credible or truthful witness, and did not accept, because the evidence did not support, her claim to have purchased a new washing machine, or a new car for the sponsor, out of savings from her casual [work], or her claim that she and the sponsor 'paid all the bills together'.
36. In a statutory declaration signed on 1 April 2016, the applicant's daughter explained the financial arrangement between the parties as follows:

My mum deposited her incomes into their join account regularly. She bough food from the supermarkets ever Friday, shared their car registration fee and paid car fuels.  
(The sponsor) paid the rest domestic expenses like electricity bills and rent. He sent and picked my mum from train station while the days she working. (Sic)
37. The Tribunal accepts that to the extent of this arrangement, the parties (with the applicant using money deposited into the joint account by her daughter), shared living expenses while living in the same house, and while the applicant, who has no drivers licence, was reliant on the sponsor to help her get to work. The Tribunal however finds the arrangement more in keeping with a house-sharing, contrived-marriage situation, than a genuine marriage. The Tribunal finds the sponsor's ignorance about the applicant's employment and ownership of assets in China, as shown by his incorrect entries on the applicant's Form 80, not commensurate with a genuine spousal relationship. The Tribunal finds the applicant's ignorance about the sponsor's previous employment, income, and the rent he paid for the house she lived in at least part of the time, not commensurate with a genuine spousal relationship, notwithstanding the traditional housewife role she claimed she undertook in the sponsor's house.
38. While acknowledging that the gathering of documents to support a visa application does not preclude the possibility of a genuine relationship, the Tribunal finds the evidence of the joint account, fictitious or ineffectual letters to 'payroll officers' and joint receipts for inexpensive items, to be contrivances for the purpose of the visa application. On the evidence provided, the Tribunal does not find that the parties ever pooled their financial resources consistent with being in a genuine spousal relationship.

#### *Nature of the household*

39. The Tribunal accepts, on the basis of the submissions and testimony provided, and copies of letters addressed to the parties at the same address, that the applicant lived in the sponsor's

house from the time of her marriage to the sponsor, [in] March 2014, until [a date in] March 2016.

40. A number of photos were provided showing the applicant holding her daughter's baby: none show the sponsor caring for or interacting with the child. No evidence was provided that the parties ever cared for the applicant's granddaughter in the sponsor's house, or that the sponsor ever shared responsibility in any way for the applicant's granddaughter. The Tribunal does not find that the parties shared joint responsibility for the care and support of children.
41. The Tribunal accepts, on the evidence provided, that the applicant cooked Chinese meals for the sponsor, which he enjoyed; and that she did all the housework, which the sponsor demanded and which she found controlling and abusive, and did not enjoy. The Tribunal accepts, on the basis of the receipts for household purchases, discussed above, that the parties jointly purchased household items, but notes that most of these items were inexpensive. The Tribunal further notes that the parties never jointly signed a lease, or purchased significant furniture items, beyond an inexpensive television.
42. In a statutory declaration signed 29 March 2016, the applicant states:

My husband does not work, he is old and is on a Centrelink payment, He would mainly stay home all day but in the evenings we would sometimes go out to eat or watch television together. We would sometimes watch Chinese programs for my benefit and they would have English subtitles for him to enjoy it too. We enjoyed watching movies together too'.
43. When the Tribunal asked the applicant how she shared her time between her daughter's house [in City 2], and the sponsor's house in [City 1], she stated that she had, since her marriage, spent every night and every day at the sponsor's house, and had never returned to her daughter's house apart from occasional social visits with the sponsor. The Tribunal expressed some surprise, given that the reason for the applicant coming to Australia was to spend time with her daughter and help with the new baby, her grandchild. The applicant explained that after she married the sponsor and moved in with him, her daughter no longer needed her and didn't have to worry about her.
44. The Tribunal reminded the applicant that it had information provided by the sponsor, that could lead or contribute to the decision being affirmed, and that she could seek an adjournment to consider her response. The Tribunal referred to a letter from the sponsor dated 10 February 2016, to the Tribunal, in which he wrote:

This letter is to confirm (the applicant) is at this address four nights and one and a half days a week. The main problem with marriage is no communication and I dont regard this as a loveing marriage. When I married (the applicant) her daughter promised me she would help mother by having English classes but this did not happen. I am asking for my name and all other details be taken off. Daughter can continue with application for mother herself'. (Sic)
45. The applicant responded that the information in the letter was untrue. She claimed that she had spent every day and night since her marriage in the sponsor's house until the family violence incidence of [March] 2016. She claimed the sponsor was motivated by spite when he claimed that she stayed at her daughter's house; that he was lying in order to deny her a visa.
46. The Tribunal prefers the sponsor's information regarding the time the applicant spent in his house. The sponsor displayed no intention in his letter to spite the applicant by denying her a visa; the reason for the applicant coming to Australia was to be with her daughter and grandchild; and the Tribunal finds it implausible that she spent no time in her daughter's

house, apart from occasional visits with the sponsor, following her marriage. Further, in a 'Legal Submission' provided by [the legal centre] [in] June 2018, a representative of the applicant states that the parties were 'living together (for 4 nights a week) up to and including the date of the incident (of [March] 2016), which occurred at the sponsor's residence'. As noted above, the Tribunal found the applicant to be an untruthful and unreliable witness, and does not accept her claims that she spent every day and night of every week at the sponsor's house, or her claims regarding contented and companionable evenings spent with the sponsor.

47. The Tribunal accepts that the parties lived together, but finds that they lived together in a shared house, contrived marriage situation rather than as a genuine spousal couple.

*Social aspects of the relationship*

48. A statutory declaration signed on 24 March 2014 was provided by the applicant's daughter, who observed that following the parties' introduction 'after several datings' they fell in love and married. She stated that she believed 'they love last for ever' because she had observed that they 'live their lives in blessed calmness'. Another statutory declaration, signed 17 March 2014, was provided by an old friend of the sponsor, who declared that he had met the applicant five months previously and believed the relationship to be true because the parties lived together.
49. Photographs were provided of the parties' wedding; with the sponsor's daughter and son-in-law at their home [in City 2] in 2014; and at the sponsor's house and out together having coffee, in 2014 and 2015. Many are annotated with information such as 'happy couple were washing car together'; 'see mother and drink coffee together 2014'; and 'sponsor gives visa applicant a surprise pretty dress'; and appear to have been taken by the applicant's daughter. A number were provided of the parties together with the applicant's daughter and son-in-law on a trip to a koala sanctuary in February 2016, with evidence provided, in the form of booking and travel receipts in joint names, that the parties stayed at [an location] for three days and two nights in September 2015.
50. In a statutory declaration signed on 29 March 2016 the applicant declared that she was close to the sponsor's mother, [with] whom she and the sponsor often shared dinner. At hearing, however, when asked what family members of the sponsor she had met, the applicant stated that she had met the sponsor's mother, but couldn't remember her name. She stated that the sponsor drove her to his mother's house, and that she just called her 'mum'. She stated that she had never met any other family members of the sponsor. She stated she had been introduced to some of his friends, but couldn't remember any of their names. She stated that she and the sponsor didn't socialise together, beyond visiting her daughter and family [in City 2].
51. A number of statutory declarations were provided signed in late March and April 2016, mostly from friends and neighbours of the applicant's daughter, stating that they had observed and believed the parties to be a couple and were sad and surprised to learn that the relationship had ended.
52. Two statutory declarations were provided, signed by the applicant's daughter on 1 April 2016 and son-in-law on 31 March 2016, that the Tribunal finds problematic. In her declaration, the applicant's daughter states that the parties, after their introduction, 'changed their contact numbers and fixed their love quickly' and that they were in a genuine relationship 'though they busted up [in] March 2016'. The son-in-law states that he 'could not believe' the applicant's relationship with the sponsor, to whom he related as a son-in-law, was over. He recalled how, following the sponsor's introduction to the applicant in [City 1] [in] November



2013, he invited the sponsor 'to having dinney (sic) in my house', [in City 2], and observed that 'they fell in love and lived together couple of weeks later'.

53. In her statutory declaration signed on 29 March 2016, however, the applicant stated that she was abused by her husband 'throughout the relationship'. She claims the sponsor swore at her; called her terrible names; physically abused her; punched her; forced her by dragging her by her hair into [certain conduct] that was 'like torture' to her; isolated her; and prevented her from talking to her daughter. She claims she lived in fear of him.
54. The Tribunal asked the applicant's daughter and son-in-law why they didn't extricate the applicant from the sponsor's house, and report incidents earlier to the police: why they left the applicant, who spoke no English, in a situation which was violently abusive, degrading and frightening, until after the sponsor, who spoke no Mandarin, withdrew his sponsorship. The applicant's daughter stated that her mother is a traditional Chinese woman and the sponsor would apologise after hitting and abusing her. The applicant's son-in-law stated that he was 'super busy' at work and such matters were the responsibility of his wife.
55. The applicant confirmed at hearing that she is close to her daughter, and the Tribunal found these explanations implausible and unconvincing. The Tribunal is of the view that arguments and frustration arising from an unsuitable and contrived marriage arrangement, which the applicant, her daughter and son-in-law were prepared to tolerate for the purpose of the visa application, have been inflated into claims of family violence, for the purpose of the visa application.
56. The Tribunal is obliged to accept the protection order as evidence of family violence, but notes that the report from the Emergency Department of [a] Hospital to the applicant's GP states: 'No remarkable injuries were induced from the assault. There were (sic) tenderness at the chest wall and at the right shoulder. Slight redness was noted ... CXR did not show any sign of fracture'. The Tribunal notes that in the [legal centre's] submission of 1 June 2018, a representative of the applicant stated that the applicant was threatened with a meat cleaver. However, in her statutory declaration of 29 March 2016, the applicant stated that the sponsor waved a knife at her and put it down on the table. When the police who attended the incident asked her where the knife was, however, she pointed to a kitchen drawer.
57. In a report dated [in] June 2018, a consulting psychologist [advised] that the applicant 'presented with PTSD following a period of domestic violence'; that the applicant 'may have lost consciousness' when attacked by the sponsor; that she had explained the concept of PTSD to the applicant and her daughter, but was 'uncertain whether (the applicant) is keen for psychological treatment'. There was no indication in the report from the [Hospital] that the applicant had lost consciousness or suffered a head or brain injury at the time of the family violence incident of [May] 2016, and no claims were made or medical evidence provided that the applicant had lost consciousness through any other incident. The Tribunal notes that the applicant has not indicated that she has ever felt any need to obtain treatment or therapy for her claimed injuries.
58. The Tribunal is of the view that the claims about family violence have been inflated for the purpose of the visa application, and to deflect from the contrived nature of the relationship. The Tribunal acknowledges that a motivation to obtain a visa does not preclude the possibility of a genuine relationship, and that a relationship that is dysfunctional and unhappy can nevertheless be a genuine spousal relationship. In this case, on the evidence provided, the Tribunal does not find that the relationship ever developed into a genuine relationship.
59. The Tribunal accepts that the parties were recognised by friends and neighbours, mainly of the applicant's daughter, as having married and to be living together, and that the declarants supported the visa application both before and after they learned that the relationship had

ended. The Tribunal places little weight on the statutory declarations of the applicant's daughter and son-in-law, finding them, for the reasons discussed above, to be contrived and fabricated for the purpose of the visa application.

60. The Tribunal accepts that the parties have participated in social events with the applicant's daughter and her family, including, on the basis of the photographic evidence and receipts, a trip to a koala sanctuary. The Tribunal accepts that the applicant has met the sponsor's mother. The Tribunal notes however that at the time of decision she did not know the name of the sponsor's mother, and finds that there is little family or social recognition of the parties as a married couple apart from the applicant's daughter and son-in-law, who are interested parties.

*Nature of persons' commitment to each other*

61. A copy of a two-sentence referral letter from the applicant's general practitioner, [signed] [in] March 2016, was provided, stating 'She has been suffering from depression, anxiety and domestic violence for part 12 months and has been getting worse for past 6 months'. The letter advised that the applicant had been prescribed an anti-depressant; tablets for indigestion; and [medication] for post-menopausal women. The Tribunal accepts that the applicant, in her [age], was taking anti-depressants and reflux and heartburn medication and was prepared, in a practical sense, to enter into a sexual relationship with the sponsor. The Tribunal accepts that she was referred to a psychologist [in] March 2016, the same day she indicated, through her agent, that she would be claiming family violence, but notes that she attended only one session with this psychologist, [in] March 2016, and that only rough notes, recording the applicant's claims, were provided from this session.
62. When the Tribunal asked the applicant about the sponsor's health issues, she stated that he had no health issues, that there was nothing wrong with him. As noted, the sponsor underwent [surgery] in 2010, was diagnosed with [a condition] in 2013, and was, at the time the applicant was living in his house, on medication and being monitored by his doctors for his [condition]. The Tribunal finds the applicant's lack of knowledge about so fundamental a fact about the sponsor as his [condition], which was a source of worry for him, to indicate a lack of interest in and commitment to the sponsor and the relationship on the part of the applicant that is not consistent with her claim to have been in a genuine spousal relationship.
63. The Tribunal asked the applicant how she and the sponsor communicated while living together, with no-one to interpret for them, as she does not speak English. She stated that she and the sponsor had no problems communicating with each other and that she communicated through body language. The Tribunal referred again to information that would or could lead to the decision being affirmed, in letters provided by the sponsor to the Tribunal to the effect that he had been prepared to make a go of the marriage, but that it had never developed into a 'proper marriage' because he and the applicant had never been able to communicate with each other, and that with ongoing health problems, and on the disability pension, he had decided not to persevere with the live-in arrangement for the time it would take for the applicant to obtain her visa.
64. In response the applicant and her daughter again denied that the applicant experienced any difficulty communicating with the sponsor, and repeated that she used body language. They claimed that the applicant was in fact picking up English words from the sponsor and from her daughter. They did not deny that the applicant's daughter had undertaken to arrange for her mother to learn English, and that the applicant had not in fact attended any English courses. When asked by the Tribunal why she didn't learn English, as she claimed to be in love with the sponsor, and he wanted her to, and it was a source of friction between them, she repeated that she had no difficulty communicating with the sponsor. She claimed that the sponsor was lying about her inability to communicate with him. The Tribunal did not find

this claim convincing. The Tribunal found the applicant to be an untruthful and unreliable witness in this regard, as in other instances.

65. The Tribunal does not find the duration of the parties' relationship to be an indicator of genuineness of relationship, because the applicant was living for half the time with her daughter, and during the time she was in the sponsor's house, according to information provided by the sponsor, which the Tribunal accepts, they did not communicate consistent with being a genuine spousal couple. The evidence does not support, and the Tribunal does not find, that they drew companionship and emotional support from each other, or that they saw the relationship as long-term.

*Any other relevant considerations*

66. The Tribunal does not accept, given the centrality of the role of the applicant's daughter in her coming to Australia and lodging the Partner visa application, the submission of the applicant's representative that the manner in which the applicant's daughter obtained residence in Australia is irrelevant. The applicant's daughter, having obtained residence via a Partner visa [in] September 2013, was well versed in the documentary requirements, and, as noted above, in the case of the 'free-to-marry' certificate and the joint bank account, organised for these to be obtained or arranged before the applicant had met the sponsor, or before they had married.
67. The Tribunal further does not accept that the report of the consulting psychologist, [of] [June] 2018 (where she states she 'thinks' the applicant's forgetfulness and memory problems are related to PTSD resulting from abuse and violence suffered in her relationship with the sponsor), explains or excuses the applicant's inability to provide basic information, at hearing, about the sponsor. The psychologist's report was written following one single session with the applicant and her daughter, and is based on and largely comprises the applicant's self-reported story and symptoms. The applicant was not in a therapeutic relationship with the psychologist, and, as reported by the psychologist, does not appear to feel sufficiently affected by possible PTSD or other mental injury to pursue treatment. For these reasons, the Tribunal gives little weight to the psychologist's report. Given the evidence before the Tribunal, the Tribunal considers that the applicant was given a fair opportunity to give evidence and present arguments at hearing.
68. Having considered the evidence and circumstances of the parties, the Tribunal does not find that the parties were at any time in a genuine and continuing relationship.
69. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made, at the time the relationship ended, or when the applicant suffered family violence at the hands of the sponsor.
70. Therefore the applicant does not meet cl.820.211(2)(a) or cl.820.221.
71. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

**DECISION**

72. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Adrienne Millbank  
Member

## **ATTACHMENT - Extract from Migration Regulations 1994**

### **1.15A Spouse**

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
  - (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
  - (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day to day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being married to each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).